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No. 767

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

CONTINENTAL OIL COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

MID-CONTINENT PETROLEUM CORPORATION, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

SINCLAIR REFINING COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

PHILLIPS PETROLEUM COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

SKELLY OIL COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

THE TEXAS COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

CITIES SERVICE OIL COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

BARECO OIL COMPANY, A CORPORATION, PETITIONER
v.
STATE OF MINNESOTA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION AND BRIEF IN SUPPORT OF PETITION

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA, AND BRIEF IN SUPPORT THEREOF

PETITION

Continental Oil Company, Mid-Continent Oil Company, Sinclair Refining Company, Phillips Petroleum Company, Skelly Oil Company, The Texas Company, Cities Service Oil Company, and Bareco Oil Company, all corporations, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Minnesota entered in these causes on September 22, 1944 (R. 1037-8), reversing judgments of the District Court of the State of Minnesota, Second Judicial District (R. 985-986).

QUESTION PRESENTED

Whether gasoline in the terminal tanks of a common carrier by pipeline, transported thither through the pipeline from refineries in other states and thereafter transported thence by common carriers by rail to destinations beyond the pipeline terminal, may be said to have ended its interstate journey and to have become subject to local property taxation by reason of the pipeline carrier's adding of certain materials to the gasoline at that point, such adding having been found by the trial court to have been intended, not to serve the business purposes of the shippers, but only to facilitate operation of the pipeline system and the change of the method of transportation from pipeline to rail.

STATEMENT

These causes involve the constitutional validity of state property taxes on gasoline assessed against petitioners for the years 1933 to 1940, inclusive.

Petitioners are producers, refiners, and marketers of petroleum products, including gasoline. Included in their market-area are Minnesota and the proximate portions of Wisconsin and North and South Dakota, herein called the northern area. Marketing is effected through bulk-plants, which are depots of supply for service or filling stations and other retail outlets. Most of the bulk-plants have two or more tanks for the storage of gasoline, generally of a capacity up to about 20,000 gallons each, though some are much larger. (R. 235 (705),[1] 236-7 (708-11), 238 (713-4), 242 (726), 246 (737), 274-6 (820-6), 621-3 (1862-8), 631-2 (1893-5), 654 (1961-2), 670 (2008), 671 (2011), 677-9 (2029-35), 704

[1]Folio references are within parentheses following the page references, the whole being enclosed within parentheses.

(2112), 705 (2114), 707-8 (2120-4), 726-7 (2178-81), 732 (2194-6), 741-2 (2223-6), 743 (2228), 745 (2234), 749 (2246), 763-4 (2288-90), 765 (2294-6), 790 (2369-70), 791 (2373), 792-3 (2376-9), 885 (Findings 1 and 2), 901 (Finding 19); Exs. 100-107.)[2]

The bulk-plants in the case of each petitioner are divisible into two classes—those operated by the petitioner itself, and those operated by jobbers or distributors, generally referred to as contract customers. The latter hold long-term contracts, usually for a year and automatically renewable. The contracts provide for the purchase of gasoline and other products in quantities ranging between specified maxima and minima per year or per month. (R. 237 (711), 623 (1867), 629 (1887), 705-6 (2114-7), 727-8 (2181-3), 742-3 (2225-8), 766 (2297-8), 790 (2370), 795-6 (2385-6), 885 (Finding 2); Exs. 107, 110-114.)

Until in 1931 all-rail tank-car transportation from refinery to bulk-plant was used by all the petitioners in bringing gasoline into the northern area. In that year construction was completed by Great Lakes Pipe Line Company of a pipeline from points in Oklahoma and Kansas to terminals in the North, including one located north of St. Paul in Ramsey County, Minnesota, known as Minnesota Transfer Terminal, and petitioners since then have transported gasoline into the northern area for the most part by means of the pipeline from their refineries to Minnesota Transfer Terminal and by means of railroad tank-cars thence to the bulk-plants. (R. 242 (726), 256-7 (767-70), 272-3 (815-9), 288 (863), 610-1 (1829-33), 623-5 (1869-74), 633-4 (1897-1900), 638-9 (1913-5), 678 (2034), 681-2 (2043-6), 709-10 (2125-8), 727 (2180),

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[2]Except in details, the findings are substantially identical as to all petitioners. For convenience, therefore, we generally cite only findings made as to petitioner Phillips, which are the only findings set out at length in the record. (R. 906 (2716).)

729-30 (2186-90), 732-3 (2196-8), 743-4 (2229-32), 757 (2269-71), 768 (2304), 792 (2374-5), 797 (2390-1), 821-2 (2463-5), 901 (Finding 19), 926 (Finding 19), 934 (Finding 19); Exs. 125, 127, 128.) As required of common carriers in interstate commerce (Act of February 4, 1887, as amended, c. 104, 24 Stat. 379, 380 (49 U. S. C. §1 et seq.)), movement and handling of the gasoline by Great Lakes are effected at rates and under rules and regulations set out in tariffs filed with the Interstate Commerce Commission. (R. 283 (848-9), 565-7 (1693-9), 579-81 (1735-42), 886 (Finding 3); Exs. 150-153.)[3]

Operation of a system for the transportation of gasoline by pipeline is subject to the limitation that, where more than one grade is moved, each grade may be moved only in large lots. A relatively fixed quantity of each "slug" is contaminated by a gasoline of a different grade preceding or following it through the line, and, in case of the line to Minnesota Transfer Terminal, the loss by such contamination becomes prohibitive if the slug is less than 20,000 barrels (840,000 gallons) in size; the larger the slug, the less the loss. (R. 306 (916-8), 391-3 (1172-8), 411-2 (1233-4), 462-3 (1686-8), 891 (Finding 7).)

The foregoing limitation posed to Great Lakes two problems which had to be solved if the pipeline was to serve as a satisfactory and acceptable vehicle of transportation.

First problem and its solution. The requirement that only large quantities be moved through the line makes it impractical to carry to Minnesota Transfer Terminal as many dif-

[3]Until June 11, 1941, the only shippers over the pipeline were Great Lakes' shareholders. On that date the Interstate Commerce Commission ordered a rate revision under which the cost of a combination pipeline-rail movement for the first time became less than the cost of an all-rail movement, and non-shareholders thereupon came in as pipeline shippers. (R. 29 (86), 31-5, 287 (859-61), 308 (922), 610-1 (1829-33), 681-2 (2043-6).) Transportation by all-rail is faster than transportation by combination pipeline-rail. (R. 318 (953-4).)

ferent grades of gasoline as there are varying specifications marketed in the northern area by Great Lakes' shippers, the specifications so marketed at one time being as many as twenty-six in number, and the amount of business potentially available would be reduced substantially were not Great Lakes able to equip itself so as to reship from the terminal approximately as many different specifications as market-demands require. (R. 325-6 (974-7), 329 (985-6), 424-5 (1272-3), 558-9 (1672-6), 891 (Finding 8), 892 (Finding 9).)

Solution of this problem lay in the facts that the numerous specifications marketed consist on an average of only six and at most of seven different basic grades of gasoline, and that conversion of these few grades into the more numerous specifications involves simply the adding of one or more different materials to most, but not all, of the gasoline, these materials being identifying color, lubricant or solvent, natural gasoline, and tetraethyl lead. (R. 387 (1160-1), 408 (1224), 409 (1227), 559-60 (1675-8), 890-1 (Findings 7 and 8).) For example, the third-grade gasolines marketed in the northern area by shippers over the pipeline are all of the same basic grade, and the same is true of the "regular" or housebrand gasolines marketed by the majority of the shippers (R. 302 (905), 322 (964-5)); in the case of a common grade the gasoline of each company, while classifiable as a separate specification, may differ from other gasolines of the same grade only as respects the particular color added (R. 559-60 (1675-8)).

Great Lakes met this operating problem by providing in its tariffs that it would without additional charge render the services incident to the adding of the materials—called "blending-in-transit" in the tariffs—provided the cost of materals be paid by the shipper. (R. 893-4 (Finding 11); Ex. 150, I. C. C. No. 79, Item 90.) The adding of the materials is done at the terminal. The adding of color is accom-

plished simply by an attending employee's dumping about a handful of coloring matter into a railroad tank-car while the latter is being filled. (R. 409 (1225), 556 (1666-8), 895 (Finding 12a); Ex. 129.) The coloring of the gasoline is required by state law in certain cases where tetraethyl lead is added to gasoline (Mason's Minnesota Statutes 1927, 1940 Supp. Sec. 3787-16), and this requirement has applied to all housebrand gasolines since in 1933 and to most third-grade gasolines since in 1939. (R. 310 (929), 322 (965-6), 425-6 (1274-6), 519-21 (1557-62), 524-32 (1570-96), 562 (1684-5), 646 (1936-8), 720-1 (2160-2), 737 (2210-1), 740 (2219), 753 (2257), 755 (2264), 771 (2313), 803-4 (2409-10), 895 (Finding 12a).)

The natural gasoline is likewise added while the tank-car is being loaded and is accomplished by an attending employee's closing one loading-rack valve and opening another. Such adding has been done for only three of the petitioners, all of whose basic grades have been identical, and is done in such varying ratios as the respective shippers request. Natural gasoline is a motor fuel of high volatility, which during seasons of low temperature is added to other gasolines to make motor-starting easier. (R. 406-7 (1218-21), 419-21 (1257-61), 554 (1660-2), 563 (1688), 739-40 (2216-8), 895-6 (Finding 12b), 907 (2720), 910-11 (2730-1), 913-4 (2739-40); Ex. 128.)

A lubricant has been added to the gasoline of one of the petitioners, and for a period apparently to that of another, both petitioners being shippers of identical basic grades. The lubricant is kept in small tanks furnished by the shippers—the only facilities at the terminal not owned by Great Lakes—,[4] and is pumped into the tank-car while the gasoline

[4]Prior to March 2, 1936, but not thereafter, Great Lakes' tariffs stated that terminal-tankage should be provided by the shippers. On that date the tariffs were amended so as to conform with the practice. Ex. 150 (cf. Items 55, 60,

is being loaded. A solvent has also been added to the gasoline of a shipper not a party to these proceedings, the method being about the same as with the lubricant except that the solvent has been run into the tank-car in advance of loading of the gasoline. (R. 317-18 (951-2), 362 (1084-5), 554-6 (1662-6), 561 (1681-3), 737 (2210), 740 (2219), 896 (Finding 12c), 907 (2721), 911 (2731).)

Unlike the other materials, the tetraethyl lead, which is an anti-knock medium, must be added while the gasoline is in the terminal tanks. The gasoline is run out of and into the tank under pressure through two circulating pipes running from the tank to a circulating pump, the proper amount of lead being injected through the pump during the first part of the process. About six hours' circulation is necessary. The proportion of lead to gasoline is very small quantitatively, about one to four thousand on an average, and the cost of leading is only about one-twentieth of a mill per gallon. (R. 302-3 (906-9), 322-4 (966-70), 393-7 (1179-90), 402 (1206), 530-1 (1588-91), 535-6 (1605-8), 896-7 and 980 (Finding 12d).)

Aside from its relation to the foregoing problem created by a pipeline's inability to transport more than a limited number of grades of gasoline, the adding of the tetraethyl lead at the terminal has on other grounds been a matter of policy with the carrier. Leaded gasolines were marketed in the northern area by all the petitioners before construction of the pipeline, the lead being added at the refinery. However, tetraethyl lead is recognized as highly dangerous to health, and because of uncertainty as to what effect contact with leaded gasoline might have upon employees' health, Great Lakes at the outset adopted and has since adhered to the policy of carrying only unleaded gasolines through its

and 65 of I. C. C. No. 22 with Items 55-A, 60-A, and 65-A of Supp. No. 12 to I. C. C. No. 36).

lines and instead offering under the conditions already noted to cause the lead to be added at its terminals. It did this, notwithstanding that facilities for leading were available at the refineries and that the shippers in fact preferred that the lead be added there. (R. 268 (802-3), 283-5 (849-55), 331-2 (992-4), 397-400 (1190-1200), 401-3 (1203-7), 425 (1274-5), 625-6 (1874-7), 733 (2198-9), 822 (2465-6), 830-4 (2490-2501), 892-3 (Finding 10), 902 (Finding 20); Ex. 126.)

The second problem and its solution. Since a line of pipe can deliver only one grade at the time and then only in large quantity, several days—sometimes as many as 20 or 25—may elapse between receipts of two different lots of the same grade. A satisfactory transportation system requires, on the other hand, that there be a continuous flow of all the different grades away from the terminal and to the bulk-plants, which, in the typical case, can each receive at one time not to exceed one-hundredth the quantity of the minimum-sized slug; on an average only about two different grades reach Minnesota Transfer Terminal each day, whereas approximately 15 or 16 different specifications are reshipped therefrom by rail each day. This problem of co-ordination Great Lakes solved by providing tankage at the terminal of capacities sufficient to hold enough of each grade to permit reshipment by rail of that grade during the intervals when only other grades could be received at the terminal. (R. 389-90 (1166-8), 391-3 (1172-8), 414-6 (1241-7), 546 (1636-7), 548-50 (1644-50), 557-9 (1671-5), 899-900 (Finding 16).)[5]

Further summary of other salient facts follows.

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[5]Great Lakes' president was of opinion that gasoline remained at the terminal an average of 35 days. (R. 307-8 (921-2).) Its general superintendent in charge of physical operations estimated "several days". (R. 415 (1243).) At times the terminal tanks have been so low that reshipments have been impossible. (R. 551 (1652).)

Operation of the pipeline necessitates the giving by a shipper of advance notice of a proposed shipment so that the carrier will be in position to receive the gasoline when tendered, and thereafter, by co-ordinating the same with other proposed shipments, to provide for its systematic movement through the line, which requires from 25 to 30 days from Oklahoma to Minnesota Transfer Terminal. To this end prospective shippers are supplied with forms for monthly submission to the carrier wherein are set out forecasts of the shipments which they propose to make during the ensuing three months. (R. 318 (953), 372-3 (1114-8), 377-8 (1130-4), 379-80 (1137-40), 412-3 (1235-8), 421-3 (1261-8), 436-40 (1306-20), 442-450 (1326-49), 501-2 (1501-4), 57-82 (Exs. 6-A to 14-C, inc.), 131-148 (Exs. 17-A to 21-C, inc.), 193-221 (Exs. 27-A to 36-C, inc.), 897-8 (Finding 14); Exs. 130-132, inc.) These forecasts and the tenders subsequently made are in turn based on estimates which petitioners make from time to time of the requirements of their own bulk-plants and of the bulk-plants of their contract customers, and no gasoline is brought to the terminal for the purpose of being held there while customers are sought out. (R. 245-6 (735-7), 247 (739), 269-72 (807-14), 334-5 (1002-5), 337-8 (1011-3), 477 (1429-31), 481 (1441-2), 550 (1649-50), 634-5 (1901-5), 636 (1906-8), 687-9 (2059-67), 714-8 (2140-54), 731 (2191-3), 747-8 (2241-3), 750-1 (2249-52), 758-9 (2274-6), 769 (2306-7), 776-8 (2327-33), 781-2 (2343-5), 786 (2356-8), 794-5 (2380-5), 809-12 (2427-35), 825 (2474-5), 897-8 (Finding 14), 900 (Finding 17); Exs. 141-148.) Furthermore, practically all the gasoline when reshipped from the terminal is in fact carried to such bulk-plants; a small proportion—less than 1% over-all, and none whatever in the case of at least two if not three of the petitioners—is transported to "spot-sale purchasers", that is, purchasers with whom no contract relations exist at the time of tender, the

quantity purchased usually being one tank-car. (R. 263-7 (788-99), 629-31 (1886-92), 649-51 (1947-52), 679-81 (2035-42), 683-4 (2048-52), 711-3 (2132-8), 727-8 (2181-2), 734-5 (2201-5), 745-6 (2235-8), 779-80 (2335-8), 812-6 (2436-46), 902-3 (Finding 20).)

It is impracticable to maintain physical identity of gasoline by lot or tender once it enters the pipeline system, segregation being practiced only in respect of grades. (R. 453-4 (1360-62), 495 (1483-4), 496-7 (1487-90), 499-501 (1497-1501), 540-6 (1618-37), 898-9 (Finding 15); Ex. 150, Supp. 2 to I. C. C. No. 79, Item 16.) Determination of when and with what continuity a particular grade shall be moved is governed by what to the carrier appears necessary to fulfill its obligations to effect transportation to the terminal so as to permit reshipment by rail. (R. 540-6 (1618-37), 898-900 (Findings 15 and 16).) When a grade common to two or more shippers arrives at the terminal, Great Lakes may treat the gasoline as that of only one shipper or may proceed to allocate it among several shippers, all in the light of Great Lakes' obligations to the various shippers by whom such grade has been tendered. (R. 454-6 (1361-7), 898-900 (Findings 15 and 16).)

Great Lakes' tariffs are entitled "local" and "proportional". (Exhibit 150; R. 886 (Finding 3).) "Local" rates apply to gasoline destined to bulk-plants within the railway switching districts of Minneapolis and Minnesota Transfer, within both of which districts lies Minnesota Tranfer Terminal. (R. 570 (1708-9), 574-5 (1722-3).) "Proportional" rates are applicable in respect of other destinations located in the northern area. Such a rate is in the tariffs announced for each such destination, and represents Great Lakes' part of a through rate for a combination pipeline-rail movement from the receiving point to that destination. (R. 567-9 (1700-6), 571-2 (1711-1716); Ex. 150.) A single

movement of gasoline through the pipeline of necessity far exceeds in quantity the gasoline reshipped by rail to any particular destination (R. 602 (1805-6)), and the shipper is required in the first instance to pay Great Lakes the local rate to the terminal, which is the only destination announced at the time of tender (R. 572 (1714-16)). The proportional rate is thereafter made applicable by way of refund to the shipper by Great Lakes of the difference between such rate and the local rate already paid, the shipper being required for that purpose to submit evidence of payment of the rail charges. (R. 572 (1716), 582 (1744-5), 583-7 (1749-59); Ex. 150, I. C. C. No. 79, Items 40 and 45; Exs. 155 and 156.) Noted on all railroad bills of lading covering movements subject to the proportional rates is the state of origin of the gasoline, and the Interstate Commerce Commission in later years has required inclusion in the tariffs of a rule to this effect. (R. 476-483 (1428-1447), 589 (1767), 663 (1988-9); Exs. 142, 144, 146, 148, 157, 158; Ex. 150, Supps. Nos. 1 and 2 and I. C. C. No. 79, Items 125 and 125-A, respectively.) Approximately 75% of the gasoline passing through Minnesota Transfer Terminal goes to destinations in Minnesota and 25% to destinations in other states. (R. 533 (1597), 900 (Finding 17).)

Shipping by combination pipeline-rail rather than all-rail has not resulted in any reduction to petitioners in their necessary storage facilities or personnel or in any change in marketing practices. (R. 632 (1895-6), 685 (2055), 719 (2155-6), 735-6 (2205-6), 751-2 (2253-4), 781 (2342), 797-8 (2391-2), 901-2 (Finding 19).)

In addition to finding the substance of the foregoing facts, the trial court found as to the years in issue that it was the intention of each petitioner, upon tender of gasoline to Great

Lakes for transportation, that the gasoline should by the latter be delivered into the custody of connecting rail carriers for further transportation to bulk-plants in the northern area operated by the petitioner or by its contract customers; that it was all so transported to such bulk-plants except, in the case of some of the petitioners, to the small extent that sales were made to spot-sale purchasers; that transportation to such spot-sale purchasers "constituted occasional en route diversions" from the rail destinations beyond the terminal originally intended to different rail destinations, likewise beyond the terminal; and that physical interruption of the gasoline at the terminal and the adding of materials there "were not designed or intended to serve the business purposes or profit of the shippers thereof, but were designed and intended solely to serve as accommodation and facilitation to operation of the Great Lakes system as a common carrier of gasoline by pipeline and to the change at Minnesota Transfer Terminal of the method of transportation from pipeline to rail," and that "such interruption and such adding were reasonable with relation *** [to] such accommodation and facilitation." (R. 902-3 (Finding 20), 900-1 (Finding 18).) Upon the basis of these facts, the trial court concluded as a matter of law in the case of each petitioner that the gasoline at the terminal on each tax day "was in course of transit in interstate commerce" and was not within Minnesota's taxing jurisdiction. (R. 905.)

Upon appeal the Minnesota Supreme Court (by a four to two decision, one justice not participating) reversed the trial court. (R. 990-1013.) The principal grounds for the decision appear to be that, though the gasoline when tendered to Great Lakes "is destined ultimately for the consignor's trade throughout the northern area", neither the petitioners nor the carrier "knew at that time the particular bulk stations *** to which the gasoline is to be reshipped from the

tank farm" (R. 994); that "ingredients were added to some of the gasoline" (R. 996); that there is "no room" for a finding that the adding and interruption at the terminal facilitated transportation (R. 1003); and that the findings to the contrary "are but inferences in the nature of conclusions" and "are not entitled to any more weight than a conclusion of law" (R. 1004). A petition for rehearing was denied and judgment entered reversing the trial court. (R. 1037-8.)

SPECIFICATION OF ERRORS TO BE URGED

1. The Minnesota Supreme Court erred in holding that the interruption of the physical movement of the gasoline and the adding of materials at Minnesota Transfer Terminal did not facilitate transportation.

2. It erred in holding that there is no evidence to support the trial court's finding that such interruption and adding were intended to facilitate transportation.

3. It erred in failing to hold that the evidence requires a finding that such interruption and adding were intended to facilitate transportation.

4. It erred in holding that the finding of the trial court as to the intent of such interruption and adding is in the nature of a conclusion of law and not a finding of fact.

5. It erred in holding that the gasoline at the terminal was not in course of transit in interstate commerce and that the movement by pipeline and the movement by rail were in law separate journeys.

6. It erred in failing to hold that imposition by the State of Minnesota and its governmental subdivisions of taxes on

gasoline at the terminal constitutes a burden on commerce among the several states, in violation of Section 7 of Article I of the Constitution of the United States, and deprives petitioners of their property without due process of law and denies them equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

7. It erred in entering judgment reversing the judgments entered in the trial court.

REASONS FOR GRANTING THE WRIT

1. So far as we are aware, these causes bring to this Court for review for the first time the question of the constitutional validity under the interstate commerce clause and the due process and equal protection clauses of a state property tax laid on gasoline in the possession of a common carrier by pipeline at the carrier's terminal while awaiting reshipment to destinations beyond the terminal.

We believe that in only one previous case has this Court had occasion to consider the relationship of terminal activities of a common carrier of gasoline by pipeline to the constitutional validity of a state tax. That case is *Phillips Pipe Line Co.* v. *State*, 302 U. S. 642, wherein *State* v. *Phillips Pipe Line Co.*, 339 Mo. 459, 97 S. W. (2d) 109, was affirmed per curiam on authority of *Eastern Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, and *Southern Natural Gas Corp.* v. *Alabama*, 301 U. S. 148. However, the *Phillips* case involved an excise tax on the carrier, whereas the present causes involve taxes on the shippers' gasoline. And, furthermore, the *Phillips* case was different upon its facts, for the reasons, among others, that the defendant there was carrying on blending operations not engaged in at Minnesota Transfer Terminal, and that, contrary to what is true here,

the gasoline was delivered into the shipper's custody at the terminal and there was no showing that the blending had any relation to facilitation of transport by pipeline.

2. The question presented by the petition is one of unusual and widespread importance. While long-distance movement of gasoline by pipeline is a relatively recent development (the Great Lakes system being the pioneer enterprise except for a converted eastern crude oil line much shorter in length), growth of this method of transportation has been rapid, a particular impetus to the trend to this method being given during the last few years by the impact of war conditions, and at the present time a network of gasoline pipelines is in operation in the eastern half of the United States. There are today at least 19 companies operating pipelines for the transportation of gasoline, not less than 13 of them common carriers. These 13 have 133 terminals in 21 different states, and we understand that it is established practice at most if not all of these 133 terminals to add to the gasoline one or more of the materials added at Minnesota Transfer Terminal. Some of the petitioners are regular shippers over gasoline pipelines other than the Great Lakes system.

So far as the Great Lakes system alone is concerned, it may be pointed out that in addition to Minnesota Transfer Terminal, there are two terminals in Iowa and one each in Nebraska, Kansas, and Illinois, and that the petitioners and others are shippers through all these terminals. Operations at these other points are carried on precisely as at Minnesota Transfer Terminal.

While no taxes have been laid on shippers of gasoline at the Great Lakes' terminals in the four states other than Minnesota, the same question can of course arise in any or all of them.

There is plain need under the circumstances for an au-

thoritative decision from this Court for the guidance of both shippers and tax administrators. It is believed that the record in the present cause is adequate fully and fairly to present the controlling issue; the showing of the petitioners is comprehensive, and it will be observed that the findings of the trial court (R. 885-905) are full and complete, with the added merit of conciseness.

In the latter connection, it may be observed that the Minnesota Supreme Court points out repeatedly (R. 990, 994, 1003, 1004) that the facts are "undisputed". And so, while this Court, as said in *Great Northern R. Co.* v. *Washington*, 300 U. S. 154, 165, is not "concluded by a finding of fact or a mixed finding of law and fact made by the state court" but "must examine the evidence to ascertain whether it supports the decision against the claim of federal right", the controversy gives no occasion, to borrow from the language of *United Gas Public Service Co.* v. *Texas*, 303 U. S. 123, 143, "to determine issues of fact arising on conflicting testimony or inferences" but only "to perform our own proper function in deciding the question of law arising upon the findings which the evidence permits." As was true of the appellate state court in the *United Gas* case (p. 143), so in the present matter, under established state practice the Minnesota Supreme Court is without authority to make findings of fact. See *Brennan* v. *Friedell*, 212 Minn. 115, 118, 2 N. W. (2d) 547.

3. There is grave doubt as to whether the decision of the Supreme Court is in accord with applicable decisions of this Court. As shown in the brief in support, the majority opinion seems to have failed to apply what has heretofore been deemed controlling principle as announced by this Court, and it proceeds in part without regard, apparently, to the clearly-established operating problems of the pipeline carrier

and in part on misunderstanding of the petitioners' contentions.

So far as these particular petitioners are concerned, the decision of the Minnesota Supreme Court is of more than common seriousness. The tax is of course an annually-recurring one, and presumably the decision in the present causes is for all times *res judicata* as to the petitioners so far as Minnesota taxes are concerned.

Wherefore it is respectfully submitted that the petition should be granted.

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